

SENATE, No. 71

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

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District 21 (Essex, Morris, Somerset and Union)

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SYNOPSIS

Establishes "Matthew's Law Limiting the Use of Restraints."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning persons with developmental disabilities,
2 amending and supplementing P.L.1977, c.82 and amending
3 P.L.1983, c.524.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. (New section) Sections 6 through 10 of this act shall be
9 known and may be cited as "Matthew's Law Limiting the Use of
10 Restraints."
11

12 2. Section 3 of P.L.1977, c.82 (C.30:6D-3) is amended to read
13 as follows:

14 3. As used in this act and P.L. , c. (C.)(pending before the
15 Legislature as this bill), unless a different meaning clearly appears
16 from the context:

17 a. "Developmental disability" means a
18 severe, chronic disability of a person which:

19 (1) is attributable to a mental or physical impairment or
20 combination of mental or physical impairments;

21 (2) is manifest before age 22;

22 (3) is likely to continue indefinitely;

23 (4) results in substantial functional limitations in three or more
24 of the following areas of major life activity, that is, self-care,
25 receptive and expressive language, learning, mobility, self-direction
26 and capacity for independent living or economic self-sufficiency;
27 and

28 (5) reflects the need for a combination and sequence of special
29 inter-disciplinary or generic care, treatment or other services which
30 are of lifelong or extended duration and are individually planned
31 and coordinated. Developmental disability includes but is not
32 limited to severe disabilities attributable to mental retardation,
33 autism, cerebral palsy, epilepsy, spina bifida and other neurological
34 impairments where the above criteria are met;

35 b. "Services" or "services for persons with developmental
36 disabilities" means specialized services or special adaptations of
37 generic services provided by any public or private agency,
38 organization or institution and directed toward the alleviation of a
39 developmental disability or toward the social, personal, physical, or
40 economic habilitation or rehabilitation of an individual with such a
41 disability; and [such]the term includes diagnosis, evaluation,
42 treatment, personal care, day care, domiciliary care, special living
43 arrangements, training, education, sheltered employment,
44 recreation, counseling of the individual with [such]the disability

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 and of his family, protective and other social and socio-legal
2 services, information and referral services, follow-along services,
3 and transportation services necessary to assure delivery of services
4 to persons with developmental disabilities; [and]
- 5 c. "Facility" or "facility for persons with developmental
6 disabilities" means a facility operated by any public or private
7 agency, organization or institution for the provision of services for
8 persons with developmental disabilities;
- 9 d. "Aversive technique" means the presentation of stimuli or
10 conditions to decrease the frequency, intensity or duration of
11 maladaptive behavior by inducing distress, discomfort or pain,
12 which may place the individual at some degree of risk of physical
13 or psychological injury;
- 14 e. "Commissioner" means the Commissioner of Human
15 Services;
- 16 f. "Division" means the Division of Developmental Disabilities
17 in the Department of Human Services;
- 18 g. "Emergency" means a situation in which immediate
19 intervention is necessary to protect the physical safety of a person
20 receiving services at a facility or from a public or private agency, or
21 to protect the safety of others from an immediate threat of serious
22 physical injury;
- 23 h. "Mechanical restraint" means the application of a device, at a
24 facility or a public or private agency, that restricts a person's
25 freedom of movement either partially or totally and includes, but is
26 not limited to, a bedside rail, mitt, jumpsuit, arm splint, vest, helmet
27 and body harness, but does not include a domed or enclosed crib;
- 28 i. "Person with traumatic brain injury" means a person who has
29 sustained an injury, illness or traumatic changes to the skull, the
30 brain contents or its coverings which results in a temporary or
31 permanent physiobiological decrease of cognitive, behavioral,
32 social or physical functioning which causes partial or total
33 disability;
- 34 j. "Physical restraint" means physical contact by facility or
35 public or private agency staff that restricts a person's freedom of
36 movement either partially or totally;
- 37 k. "Public or private agency" means an entity under contract
38 with, licensed by or working in collaboration with the division or
39 Department of Human Services, as appropriate, to provide services
40 for persons with developmental disabilities; and
- 41 l. "Unusual incident" means an event involving a person
42 receiving services at a facility or from a public or private agency,
43 involving indications or allegations of criminal actions, injury,
44 negligence, exploitation, abuse, clinical mismanagement or medical
45 malpractice; a major unforeseen event, including a serious fire,
46 explosion or power failure, which presents a significant danger to
47 the safety or well being of persons served or staff; or a newsworthy

incident which includes incidents that affect the Department of Human Services or the division in a manner that may attract media interest or calls, especially those incidents involving potential criminal charges, famous, notorious or dangerous people or relating to a news item of wide public interest.

(cf: P.L.1985, c.145, s.12)

3. Section 5 of P.L.1977, c.82 (C.30:6D-5) is amended to read as follows:

5. a. No person receiving services for the developmentally disabled at any facility shall:

(1) be subjected to any corporal punishment;

(2) be administered any medication or chemical restraint, except upon the written authorization of a physician when necessary and appropriate as an element of the service being received or as a treatment of any medical or physical condition in conformity with accepted standards for ~~[such]~~the treatment. The nature, amount of, and reasons for the administration of any medication or chemical restraint shall be promptly recorded in ~~[such]~~the person's medical record;

(3) be ~~[physically or]~~ chemically restrained or isolated in any manner, except in emergency situations for the control of violent, disturbed or depressed behavior which may immediately result in or has resulted in harm to ~~[such]~~the person or other person ~~[or in substantial property damage]~~.

The chief administrator of the facility, or his designee, shall be notified immediately upon the application of any ~~[such]~~chemical restraint or isolation, and thereafter ~~[such]~~the restraint or isolation shall be continued only upon the written order of the administrator or designee. ~~[Such]~~The order shall be effective for not more than 24 hours, and may be renewed for additional periods of not more than 24 hours each if the administrator or designee shall determine that ~~[such]~~ the continued restraint or isolation is necessary. While in restraint or isolation, ~~[such]~~the person shall be checked by an attendant every 15 minutes, and bathed every 24 hours. ~~[Such]~~The restraint or isolation shall be terminated at any time if an attending physician shall find ~~[such]~~the restraint or isolation to be medically contraindicated. The nature, duration of, reasons for and notation of attendant checks shall be promptly recorded in ~~[such]~~the person's medical record;

(4) be subjected to shock treatment, psychosurgery, sterilization or medical behavioral or pharmacological research without the express and informed consent of ~~[such]~~the person, if a competent

1 adult, or of [such]the person's guardian ad litem specifically
2 appointed by a court for the matter of consent to these proceedings,
3 if a minor or an incompetent adult or a person administratively
4 determined to be mentally deficient. [Such]The consent shall be
5 made in writing and shall be placed in [such]the person's record.

6 Either the party alleging the necessity of [such]the procedure or
7 [such]the person or [such]the person's guardian ad litem may
8 petition a court of competent jurisdiction to hold a hearing to
9 determine the necessity of [such]the procedure at which the client is
10 physically present, represented by counsel, and provided the right
11 and opportunity to be confronted with and to cross-examine all
12 witnesses alleging the necessity of [such]the procedure. In
13 [such]the proceedings, the burden of proof shall be on the party
14 alleging the necessity of [such]the procedure. In the event that a
15 person cannot afford counsel, the court shall appoint an attorney not
16 less than 10 days before the hearing. An attorney so appointed shall
17 be entitled to a reasonable fee to be determined by the court and
18 paid by the county from which the person was admitted. Under no
19 circumstances may a person in treatment be subjected to hazardous
20 or intrusive experimental research which is not directly related to
21 the specific goals of his treatment program.

22 b. Every developmentally disabled person in residence at any
23 facility shall be provided with a nutritionally adequate and
24 sufficient diet and shall receive appropriate and sufficient medical
25 and dental care on a regular basis and whenever otherwise
26 necessary.

27 c. Every developmentally disabled person between the ages of 5
28 and 21, inclusive, in residence or full-time attendance at any facility
29 shall be provided a thorough and efficient education suited to
30 [such]the person's age and abilities.

31 (cf: P.L.1977, c.82, s.5)

32

33 4. Section 11 of P.L.1977, c.82 (C.30:6D-11) is amended to read
34 as follows:

35 11. [Such]The plan shall:

36 a. Include a statement of the long-term habilitation goals for
37 [such]the person and the intermediate objectives relating to the
38 attainments of [such]the goals. [Such]These objectives shall be
39 stated specifically and in sequence and shall be expressed in
40 behavioral or other terms that provide measurable indices of
41 progress;

42 b. Describe how the objectives will be achieved and the barriers
43 that might interfere with the achievement of them;

- 1 c. State an objective criteria and an evaluation procedure and
2 schedule for determining whether [such]the objective and goals are
3 being achieved;
4 d. Provide a coordinator who will be responsible for the
5 implementation of the plan;
6 e. Specify habilitation services to be provided;
7 f. Describe the personnel, including their qualifications,
8 necessary for the provision of the services described in [such]the
9 plan;
10 g. Specify the date of initiation and the anticipated duration of
11 each service to be provided;
12 h. Specify the role and objectives of all parties to the
13 implementation of the plan.

14 The plan shall not include physical or mechanical restraint or
15 aversive techniques as a planned intervention, but may provide for
16 the use of physical or mechanical restraint in accordance with the
17 provisions of subsection b. of section 6 of P.L. , c. (C.)
18 (pending before the Legislature as this bill) and subsection b. of
19 section 7 of P.L. , c. (C.)(pending before the Legislature as this
20 bill).
21 (cf: P.L.1977, c.82, s.11)
22

23 5. Section 5 of P.L.1983, c.524 (C.30:6D-17) is amended to read
24 as follows:

25 5. a. The department shall ensure that every developmentally
26 disabled person in a community residential facility receives
27 adequate medical and dental care, a nutritionally adequate diet, a
28 full daily program of structured activities, and those other services
29 which are necessary to maximize the developmental potential of the
30 developmentally disabled person in a manner least restrictive of
31 personal liberty. Every developmentally disabled person shall have
32 adequate protection from abuse and a wholesome environment in
33 which to live.

34 b. All rights and procedures for the enforcement of rights
35 recognized in sections 4, 5 and 7 of the "Developmentally Disabled
36 Rights Act," P.L.1977, c.82 (C.30:6D-4, 5, 7), and all rights and
37 procedures specified in P.L. , c. (C.)(pending before the
38 Legislature as this bill) shall apply to persons covered by [this
39 act]P.L.1983, c.524 (C.30:6D-13 et seq.).

40 c. The department shall ensure that:

41 (1) aversive techniques are not used on a person with traumatic
42 brain injury who is in a community residence licensed under
43 P.L.1977, c.448 (C.30:11B-1 et seq.); and

44 (2) if physical or mechanical restraint is used on a person with
45 traumatic brain injury who is in a community residence licensed
46 under P.L.1977, c.448 (C.30:11B-1 et seq.), that use shall be in

1 accordance with the provisions of sections 6 and 7 of P.L. , c.
2 (C.)(pending before the Legislature as this bill).
3 (cf: P.L.1983, c.524, s.5)
4

5 6. (New section) a. Except as provided in subsection b. of this
6 section, a person receiving services for persons with developmental
7 disabilities at a facility or from a public or private agency shall not
8 be subjected to physical restraint unless:

9 (1) an emergency exists that necessitates the use of physical
10 restraint;

11 (2) the physical restraint is used only for the period that is
12 necessary to contain the behavior of the person so that the person no
13 longer poses an immediate threat of causing serious physical injury
14 to himself or others, except that this period shall not exceed one
15 hour;

16 (3) a medical order authorizing the use of physical restraint is
17 obtained from the person's treating physician before the application
18 of the physical restraint or not later than 15 minutes after the
19 application; (4) the physician who signed the order referred to in
20 paragraph (3) of this subsection or the attending physician examines
21 the person not later than one working day after the application of
22 the physical restraint; and

23 (5) the use of force in the application of physical restraint does
24 not exceed the force that is reasonable and necessary under the
25 circumstances precipitating the use of physical restraint.

26 b. The provisions of subsection a. of this section shall not apply
27 in the case of physical restraint that is applied to:

28 (1) assist a person in completing a task if the person does not
29 resist the application of physical restraint or if the restraint is
30 minimal in intensity and duration;

31 (2) escort or carry a person to safety if the person is in danger in
32 his present location; or

33 (3) enable a health care professional to treat the medical needs
34 of the person.

35 c. Within one working day of the use of physical restraint on a
36 person in an emergency, the use shall be reported as an unusual
37 incident, in accordance with the division's policy for reporting
38 unusual incidents, which shall include reporting these incidents to
39 the person's parent or legal guardian, an unusual incident report
40 coordinator in the division and the Office of Operations Support, or
41 its successor, in the Department of Human Services.
42

43 7. (New section) a. Except as provided in subsection b. of this
44 section, a person receiving services for persons with developmental
45 disabilities at a facility or from a public or private agency shall not
46 be subjected to mechanical restraint unless:

47 (1) an emergency exists that necessitates the use of mechanical
48 restraint;

1 (2) a medical order authorizing the use of mechanical restraint is
2 obtained from the person's treating physician before the application
3 of the mechanical restraint or not later than 15 minutes after the
4 application of the mechanical restraint;

5 (3) the physician who signed the order referred to in paragraph
6 (2) of this subsection or the attending physician examines the
7 person not later than one working day immediately after the
8 application of the mechanical restraint;

9 (4) the mechanical restraint is applied by staff trained in the use
10 and application of the particular restraint;

11 (5) the person is given the opportunity to move and exercise the
12 parts of his body that are restrained at least 10 minutes for every 60
13 minutes of restraint;

14 (6) a member of the staff lessens or discontinues the mechanical
15 restraint every 15 minutes to determine whether the person will stop
16 or control dangerous behavior without the use of the restraint;

17 (7) the record of the person contains a notation that includes: the
18 time of day that the mechanical restraint was lessened or
19 discontinued pursuant to paragraph (6) of this subsection; the
20 response of the person to the lessening or discontinuation of the
21 restraint; and the action taken by the member of the staff to lessen
22 or discontinue the mechanical restraint, as appropriate;

23 (8) a member of the staff continuously monitors the person
24 during the time that mechanical restraint is used on the person; and

25 (9) the mechanical restraint is used only for the period that is
26 necessary to contain the behavior of the person so that the person no
27 longer poses an immediate threat of causing serious physical injury
28 to himself or others.

29 b. If a medical order authorizing the use of mechanical restraint
30 is first obtained from the person's treating physician for any of the
31 purposes listed in this subsection, the provisions of subsection a. of
32 this section shall not apply when the mechanical restraint is used to:

33 (1) enable a health care professional to treat the medical needs
34 of the person;

35 (2) protect a person who is known to be at risk of injury to
36 himself because he lacks coordination or suffers from frequent loss
37 of consciousness;

38 (3) provide proper body alignment of a person; or

39 (4) position a person who has physical disabilities in a manner
40 described in the person's individual habilitation plan.

41 c. Within one working day of the use of mechanical restraint on
42 a person in an emergency, the use shall be reported as an unusual
43 incident, in accordance with the division's policy for reporting
44 unusual incidents, which shall include reporting these incidents to
45 the person's parent or legal guardian, an unusual incident report
46 coordinator in the division and the Office of Operations Support, or
47 its successor, in the Department of Human Services.

- 1 8. (New section) As a condition of licensure, the Department of
- 2 Human Services shall require that a private facility or agency that
- 3 provides services for persons with traumatic brain injury shall not:
- 4 a. use aversive techniques on a person with traumatic brain
- 5 injury; and
- 6 b. use physical or mechanical restraints on a person with
- 7 traumatic brain injury unless that use is in accordance with the
- 8 provisions of sections 6 and 7 of this act.

1 limited circumstances, physical and mechanical restraints may be
2 used in emergency situations only. Under current law, in addition
3 to emergency use, they may be used as planned interventions as part
4 of approved behavior modification plans, and as a result of
5 inclusion in these plans, the unusual incident reporting requirements
6 of the Division of Developmental Disabilities in the Department of
7 Human Services do not apply. The bill also excludes aversive
8 techniques as planned interventions.

9 Specifically, under the provisions of the bill, a person receiving
10 services for persons with developmental disabilities at a public or
11 private facility or from a public or private agency that provides
12 services for persons with developmental disabilities, would not be
13 subjected to physical restraint unless:

14 -- An emergency exists that necessitates the use of physical
15 restraint;

16 -- The physical restraint is used only for the period that is
17 necessary to contain the behavior of the person so that the person no
18 longer poses an immediate threat of causing serious physical injury
19 to himself or others, except that this period shall not exceed one
20 hour;

21 -- A medical order authorizing the use of physical restraint is
22 obtained from the person's treating physician before the application
23 of physical restraint or not later than 15 minutes after the
24 application;

25 -- The physician who signed the order or the attending physician
26 examines the person not later than one working day after the
27 application of physical restraint; and

28 -- The use of force in the application of the physical restraint does
29 not exceed the force that is reasonable and necessary under the
30 circumstances precipitating the use of physical restraint.

31 The limited circumstances under which the above provisions
32 would not apply are when physical restraint is applied to: assist a
33 person in completing a task if the person does not resist the
34 application of physical restraint or if the restraint is minimal in
35 intensity and duration; escort or carry a person to safety if the
36 person is in danger in his present location; or enable a health care
37 professional to treat the medical needs of the person.

38 With regard to mechanical restraints, a person receiving services
39 for persons with developmental disabilities at a facility or from a
40 public or private agency would not be subjected to mechanical
41 restraint unless:

42 -- An emergency exists that necessitates the use of mechanical
43 restraint;

44 -- A medical order authorizing the use of mechanical restraint is
45 obtained from the person's treating physician before the application
46 of the mechanical restraint or not later than 15 minutes after the
47 application of the mechanical restraint;

48 -- The physician who signed the order or the attending physician

1 examines the person not later than one working day after the
2 application of mechanical restraint;
3 -- The mechanical restraint is applied by staff trained in the use and
4 application of the particular restraint;
5 -- The person is given the opportunity to move and exercise the
6 parts of his body that are restrained at least 10 minutes for every 60
7 minutes of restraint;
8 -- A member of the staff lessens or discontinues the mechanical
9 restraint every 15 minutes to determine whether the person will stop
10 or control dangerous behavior without the use of the restraint;
11 -- The record of the person contains a notation that includes: the
12 time of day that the mechanical restraint was lessened or
13 discontinued; the response of the person to the lessening or
14 discontinuation of the restraint; and the action taken by the member
15 of the staff to lessen or discontinue the mechanical restraint, as
16 appropriate;
17 -- A member of the staff continuously monitors the person during
18 the time that mechanical restraint is used on the person; and
19 -- The mechanical restraint is used only for the period that is
20 necessary to contain the behavior of the person so that the person
21 no longer poses an immediate threat of causing serious physical
22 injury to himself or others.

23 The limited circumstances under which the above provisions
24 would not apply are when mechanical restraint is applied to: enable
25 a health care professional to treat the medical needs of the person;
26 protect a person who is known to be at risk of injury to himself
27 because he lacks coordination or suffers from frequent loss of
28 consciousness; provide proper body alignment of a person; or
29 position a person who has physical disabilities in a manner
30 described in the person's individual habilitation plan. In these
31 circumstances, however, a medical order authorizing the use of
32 mechanical restraint for any of these purposes would first need to
33 be obtained.

34 For both physical and mechanical restraints, the bill provides that
35 within one working day of the use of the restraint, the use would be
36 reported as an unusual incident, in accordance with the Division of
37 Developmental Disabilities' policy for reporting unusual incidents,
38 which would include reporting these incidents to the person's parent
39 or legal guardian, an unusual incident report coordinator in the
40 division and the Office of Operations Support, or its successor, in
41 the Department of Human Services.

42 The bill also provides that, as a condition of licensure, a private
43 facility or agency that provides services for persons with traumatic
44 brain injury shall not use aversive techniques on persons with
45 traumatic brain injury, and shall not use physical or mechanical
46 restraints unless that use is in accordance with the procedures
47 outlined in the bill.

48 In addition, the bill includes a provision requiring staff training

1 in positive approaches to behavior and completion of a course in
2 understanding the legal and ethical responsibilities of staff. The bill
3 also requires the department to develop and maintain a web site for
4 statistical information about the number of unusual incidents
5 occurring at public or private facilities or agencies, as well as any
6 reports or findings from any State monitoring agencies.

7 The bill defines "emergency" as a situation in which immediate
8 intervention is necessary to protect the physical safety of a person
9 receiving services at a facility or from a public or private agency, or
10 to protect the safety of others from an immediate threat of serious
11 physical injury.

12 In addition, the bill amends: N.J.S.A.30:6D-5 to exclude
13 "substantial property damage" as a basis for using chemical restraint
14 in emergency situations; and N.J.S.A.30:6D-11 to provide that
15 individual habilitation plans shall not include aversive techniques or
16 physical or mechanical restraint as planned interventions, but the
17 plans may provide for the use of physical or mechanical restraint in
18 accordance with the limited circumstances described above.

19 This bill is based on Nevada and Pennsylvania law and is
20 intended to reduce the use of physical and mechanical restraints and
21 eliminate aversive techniques in the State, and to address the tragic
22 situation that occurred at a State-licensed facility in Haddonfield,
23 where a teenage boy with autism, named Matthew, was improperly
24 restrained and left unattended.